

BEFORE THE
JEFFERSON COUNTY BOARD OF HEALTH

GASP,

Petitioner,

vs.

Jefferson County Department of Health
Air Pollution Control Program,

Respondent.

REQUEST FOR HEARING

Pursuant to Jefferson County Air Pollution Control R. & Regs., ch. 12,
Petitioner submits this Request for Hearing to contest an administrative action of
the Jefferson County Department of Health Air Pollution Control Program.

Petitioner

1. The name, mailing address, and telephone number of the Petitioner is
as follows:

GASP
732 Montgomery Highway #405
Birmingham, AL 35216
(205) 541-3746

Administrative Action Contested

2. The administrative action of the Jefferson County Department of
Health Air Pollution Control Program which is being contested is the issuance of

EXHIBIT

A

14-001626 ENU HEALTH

Major Source Operating Permit No. 4-07-0001-03 to ABC Coke, A Division of Drummond Company, Inc., on August 11, 2014.

Timeliness of Request

3. Notice of the issuance of Major Source Operating Permit No. 4-07-0001-03 to ABC Coke, A Division of Drummond Company, Inc. was given to GASP by the Jefferson County Department of Health Air Pollution Control Program on August 12, 2014. This Request is filed within 15 days thereafter in accordance with Jefferson County Air Pollution Control R. & Regs., Section 12.4.1.

Threatened or Actual Injuries Suffered

4. The threatened or actual injuries suffered by GASP as a result of the issuance of Major Source Operating Permit No. 4-07-0001-03 by the Jefferson County Department of Health Air Pollution Control Program, and the emissions authorized thereby, are described as follows:

A. GASP is an Alabama non-profit, membership corporation. An organization can seek relief on behalf of its members when its members would otherwise have standing to pursue such relief; the interests it seeks to protect are germane to the organization's purpose; and neither the claims asserted nor the relief requested require that individual members be made parties in the proceeding.

See e.g., Black Warrior Riverkeeper, Inc. v. Alabama Dep't of Env'tl. Mgmt., EMC Docket No. 05-01, 2006 AL ENV LEXIS 2, *12-15 (Feb. 24, 2006) (an organization has standing to contest an ADEM administrative action under Ala. Code § 22-22A-7(c) if its members would otherwise have standing to pursue such relief; the interests it seeks to protect are germane to the organization's purpose; and neither the claims asserted nor the relief requested require that individual members be made parties in the proceeding); *Friends of Hurricane Creek v. Alabama Dep't of Env'tl. Mgmt.*, EMC Docket No. 08-07, 2010 AL ENV LEXIS 1, *47-52 (Apr. 16, 2010) (organization who's members use and enjoyment of water is threatened by discharges authorized by ADEM permit is "aggrieved" under Ala. Code § 22-22A-7(c)), *aff'd sub nom. Alabama Rivers Alliance, Inc. v. Alabama Dep't of Env'tl. Mgmt.*, 14 So.3d 853 (Ala. Civ. App. 2007); *Black Warrior Riverkeeper, Inc. v. Alabama Dep't of Env'tl. Mgmt.*, EMC Docket No. 09-04, 2011 AL ENV LEXIS 3, *10-12 (Aug. 19, 2011) (organization who's members use and enjoyment of water is threatened by discharges authorized by ADEM permit is "aggrieved" under Ala. Admin. Code R. 335-2-1-.02(b)); *Ex parte Fowl River Protective Ass'n, Inc.* 572 So.2d 446, 456 n. 2 (Ala. 1990) (organizations "that appealed this ADEM decision clearly qualify" as persons

“aggrieved” under Ala. Code § 22-22A-7(c); “a citizen’s statutory right to appeal an ADEM decision should be interpreted broadly”).

B. The purpose of GASP is to further the conservation, preservation, protection, maintenance, improvement, and enhancement of human health and the environment on behalf of its members and in the public interest. GASP’s current mission is to reduce air pollution, educate the public about the health risks of poor air quality, and encourage community leaders to serve as role models for clean air and clean energy.

C. Members of GASP reside, work, and/or recreate in close proximity to the ABC Coke facility which was granted Major Source Operating Permit No. 4-07-0001-03. These members are “aggrieved” because they have suffered the following threatened and actual injuries in fact as a result of the operations authorized by Major Source Operating Permit No. 4-07-0001-03: soot (particulate) deposits that are injurious to their homes and interfere with the enjoyment of their homes; smells that are unpleasant in and around their homes; exposures to airborne carcinogens in concentrations that tend to be injurious to human health and welfare; and exposures to airborne carcinogens in concentrations that create an incremental increase in the risk of cancer that is greater than 1 in 100,000. See Jefferson County Air Pollution Control R. & Regs., Section 12.2.2 (“‘Aggrieved’

**BEFORE THE
JEFFERSON COUNTY BOARD OF HEALTH**

GASP,)	
)	
Petitioner,)	
)	
v.)	
)	
Jefferson County Department of Health)	
Air Pollution Control Program,)	Case No. 2014-003
)	
Respondent,)	
)	
and)	
)	
ABC Coke,)	
)	
Intervenor.)	

**HEARING OFFICER'S FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND RECOMMENDATION**

Before the Hearing Officer are the Motions to Dismiss filed by the Respondent, the Jefferson County Department of Health Air Pollution Control Program ("Program"), and the Intervenor, ABC Coke. After careful review of the Motions to Dismiss and all related filings, the undersigned makes the following Findings of Fact, Conclusions of Law, and Recommendation to the Jefferson County Board of Health ("Board"):

Findings of Fact

The Program issued renewed Major Source Operating Permit No. 4-07-0001-03 ("Permit") to ABC Coke on August 11, 2014. On August 26, 2014, GASP requested a hearing ("Request for Hearing") before the Board pursuant to Jefferson County Air Pollution Control R. & Regs. ("Rules and Regulations" or "JCBH RR"), ch. 12. GASP is an Alabama non-profit,



membership corporation the purpose of which is to further the protection and improvement of human health and the environment.

ABC Coke's facility is a coke and coke by-products manufacturing plant located in Tarrant, Alabama ("ABC Plant"). It was built pursuant to a 1919 contract with the United States to provide a source of munitions and other products critical to the war effort. The ABC Plant was owned and operated by the United States until the end of 1937, and it was again controlled by the U.S. War Production Board and its predecessor defense-related agencies during World War II. It produces coke by heating coal in an oxygen-depleted environment, and the coke is then shipped to customers. The by-products are recovered through cooling, settling and reaction processes to produce coke oven gas, tar, light oil and ammonium sulfate. The coke oven gas is consumed on site for energy recovery and the other by-products are sold.

The Program is fully authorized and approved to administer and enforce the Title V permit program in Jefferson County. ABC Coke has had a Title V permit from the Program for decades. ABC Coke has not made any major changes to the ABC Plant since its last renewed permit was issued on November 17, 2008.

ABC Coke timely submitted a Title V permit renewal application on May 15, 2013. The Program issued a draft renewed Title V permit to ABC Coke for the ABC Plant on February 5, 2014. Because no significant changes to the facility, the draft permit was almost the same as prior version. It is not disputed or alleged that it was missing any requirement applicable to the facility. A lengthy and thorough public notice and comment process followed, through which the public was provided several opportunities to participate in the permitting process, as well as substantially more time to comment than is required. A public information session was held on March 31, 2014, whereby citizens were provided information about the draft permit and given an

opportunity to ask questions and offer comments for the public record. On April 9, 2014, the Program responded in writing to comments and questions presented at the public information session. In addition, a public hearing was held on April 14, 2014; there, citizens again had the opportunity to offer comments on the draft permit. The Program held two additional informational meetings during the public comment period (on April 12 and 15, 2014) to explain the Title V permitting process and how coke plants operate. The informational meetings and the hearing were held in locations accessible to the community surrounding the ABC Plant. Forty-nine (49) parties submitted comments on the draft permit, and twenty-five (25) individuals spoke at the public hearing. The public was thus afforded ample, and meaningful, opportunity to comment on the draft permit and participate in the permitting process. GASP submitted comments on the draft renewed permit on April 18, 2014. The Program considered and responded to GASP's comments prior to issuing the final renewed permit on August 11, 2014. In response to comments from GASP and others, the Program made revisions to the permit—specifically, additional requirements were incorporated into the fugitive dust provision.

The proposed permit and all related public comments were sent to the U.S. Environmental Protection Agency ("EPA") for review. Pursuant to section 505(b) of the Clean Air Act, EPA has a right to object to the Program's issuance of the permit if the permit contains provisions that are not in compliance with the requirements of the Clean Air Act. 42 U.S.C. § 7661d(b). EPA did not object to issuance of the Permit.

GASP filed its Request for Hearing, which states that unidentified members of GASP have suffered the following threatened and actual injuries as a result of the operations authorized by ABC Coke's Permit: soot deposits on their home; unpleasant smells; and exposure to airborne carcinogens in concentrations (1) that tend to be injurious to human health and welfare and (2)

create an incremental increase in the risk of cancer that is greater than 1 in 100,000. The Request for Hearing proposes that the Board "issue an order disapproving the issuance of [the Permit] in its entirety" without alleging any basis or rationale for such an order. The Request for Hearing also does not allege any error that the Program committed in issuing the Permit, nor does it claim that any aspect of the Permit is contrary to any law.

Taking the contents of the Request for Hearing as true, it identifies no alleged error that the Program committed in renewing ABC Coke's Permit—no fact or legal theory which, if proved true or accepted, would support that result. The Request for Hearing does not identify any individual GASP member who suffers the claimed threatened or actual injuries, much less one who would be harmed by the issuance of the Permit. Taken as true, the Request for Hearing does not contain any suggested revision to the Permit which would redress any claimed injury or unspecified error, in the form of a statement of proposed terms and conditions pursuant to JCBH RR section 12.4.4(d) or otherwise. ABC Coke and the Program have both filed Motions to Dismiss GASP's Request for Hearing, to which GASP has responded.

Conclusions of Law

The federal Clean Air Act ("CAA") establishes a federal-state partnership but makes clear that "air pollution prevention . . . and air pollution control at its source is the primary responsibility of States and local governments." 42 U.S.C. § 7401(a)(3). Thus, while the United States Environmental Protection Agency ("EPA") is responsible for establishing national ambient air quality standards ("NAAQS"), *see id.* § 7409, the States and local governments ensure compliance with the NAAQS through State Implementation Plans ("SIP"). *See id.* §§ 7407(a), 7410(a). The Alabama Department of Environmental Management promulgates and enforces the Alabama SIP, and permits issued pursuant thereto, so as to achieve the NAAQS in

Alabama. *See* 40 C.F.R. § 52.50. Pursuant to the Alabama Air Pollution Control Act, Ala. Code, § 22-28-23, the Board, through the Program, does the same with respect to Jefferson County.

The Program assures attainment of the NAAQS by, among other things, requiring facilities like ABC Coke's facility to obtain air permits. *See generally* JCBH RR ch. 2, 18. In addition, Title V of the CAA requires that facilities deemed major sources under the CAA, like ABC Coke's facility, obtain and operate pursuant to a federal operating permit called a "Title V permit." *See* 42 U.S.C. §§ 7661–7661f. States and local governments may implement Title V permitting through their own regulations. *Id.* § 7661a(d). The Program is fully authorized and approved to administer and enforce the Title V permit program in Jefferson County. *See* 40 C.F.R. Part 70, Appendix A (approval status of state and local operating permits programs).

Title V permits consolidate all operating requirements applicable to the source (here, ABC Coke's facility) into one permit. Compliance with a Title V permit "assure[s] compliance with all emission limitations and other substantive CAA requirements that apply to the source." *Env'tl. Integrity Project v. U.S. Env'tl. Prot. Agency*, 425 F.3d 992, 993 (D.C. Cir. 2005). The Title V permit does not create new, substantive requirements, or modify existing substantive standards or obligations. *See Sierra Club v. Ga. Power Co.*, 443 F.3d 1346, 1348 (11th Cir. 2006). Thus, the renewal of a Title V permit does not provide an opportunity to re-examine the underlying substantive standards to be incorporated into that permit. Title V permits are renewed every five years. JCBH RR § 18.5.2. Permit renewals are subject to public review. *Id.* § 18.15.4.

A request for hearing may be filed by a person "aggrieved" by an administrative action of the Program. JCBH RR § 12.4.1. The question of whether a petitioner is "aggrieved" under

JCBH RR section 12.2.2 is essentially the same as the question of whether a petitioner has standing to pursue a request for hearing before the Board. See *Black Warrior Riverkeeper, Inc. v. Ala. Dep't of Env'tl. Mgmt.*, EMC Docket No. 09-04, 2011 AL ENV LEXIS 3, at *11 (Aug. 19, 2011) ("‘Aggrieved’ as it applies to [Petitioner] requires a finding that at least one member of the organization suffers a concrete injury in fact as a result of the issuance of this permit.") Standing is jurisdictional and must be established at the outset of a proceeding. *Nat'l Parks Conservation Ass'n v. Norton*, 324 F.3d 1229, 1242 (11th Cir. 2003) ("[B]ecause the constitutional standing doctrine stems directly from Article III's ‘case or controversy’ requirement . . . , this issue implicates our subject matter jurisdiction, and accordingly must be addressed as a threshold matter."). GASP has failed to demonstrate that it has standing.¹

First, GASP does not say what the Air Pollution Control Program did wrong. GASP has identified no alleged error that the Program committed in renewing ABC Coke's Permit—no fact or legal theory which, if proved true or accepted, would support that result. Without this basic information, the Request for Hearing is hollow and fails to meet the burden for establishing that GASP has standing, because there is nothing to redress. *DaimlerChrysler Corp v. Cuno*, 547 U.S. 332, 342 (2006) (internal quotation omitted) (emphasis added) ("A plaintiff must allege personal injury fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief."); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992). GASP's alleged injuries, which amount to civil tort claims, are not able to be redressed by the Board or the Hearing Officer. GASP's Request for Hearing is thus simply a grievance, overlooking a pleading requirement so fundamental that it is commonly taken for granted: unlawful conduct must be alleged. See, e.g., *Warth v. Seldin*, 422 U.S. 490, 499–500 (1975) (internal quotation

¹ Hearing officers Oct. 27, 2014 order granting request for hearing was nullified in subsequent order of Jan. 3, 2015 noticing the parties that in light of the totality of pleadings the threshold question of standing was to be revisited and parties were invited to brief the ‘standing’ issue.

omitted) (emphases added) (Jurisdiction exists “only when the plaintiff himself has suffered some threatened or actual injury resulting from the *putatively illegal action*. . . . Although standing in no way depends on the merits of the plaintiff’s *contention that particular conduct is illegal*.”).

GASP implies that it will reveal some alleged error later, at a would-be prehearing conference. See GASP’s Supplemental Response to Motions to Dismiss at 1–2. But the possibility that the Hearing Officer may order a prehearing conference to consider clarification and limitation of the issues pursuant to JCBH RR section 12.9.1 does not cure GASP’s failure to fulfill the prerequisite of alleging some error in the Request for Hearing itself. There is nothing for a prehearing conference to clarify or limit. The corresponding rules of the Alabama Environmental Management Commission illustrate this, since they also provide for a prehearing conference to clarify and limit the issues and nonetheless articulate the basic pleading requirement that a request for hearing must contain a statement of the alleged error(s) made by the agency. See ADEM Admin. Code R. 335-2-1-.10(2)(b), 335-2-1-.04(5)(d). Thus the possibility of streamlining the relevant issues at a prehearing conference for purposes of managing the proceeding does not mean that a party may request a hearing in the first instance without identifying any error on the part of the agency.

In addition, GASP compounds the foregoing problem by failing to allege that any individual member has been injured. GASP argues that it need not name a member, but it must at least identify some individual, even if not “by name,” in order to have alleged that the injury is particularized and not some experience common to the public. Instead, GASP only claims generally that “[m]embers of GASP” have suffered certain vague and unsubstantiated “threatened and actual injuries.” See Request for Hearing at 4. To support standing, claims of

injury must be accompanied by specific and particularized injury of an individual member. *See, e.g., Nat'l Treasury Emps. Union v. U.S. Dep't of Treasury*, 25 F.3d 237, 242 (5th Cir. 1994) ("Because the [association] has failed to identify even one individual who [has or could be injured], it is clear to us that the injury alleged is . . . only hypothetical and conjectural."); *Nat'l Coal. for Students with Disabilities v. Miller*, 298 F. Supp. 2d 16, 20 (D.D.C. 2002) ("[P]laintiff must at least allege in its complaint that a specific member has suffered an injury."). Without alleging how any individual has suffered a particularized injury or identifying any error committed by the Program, GASP may not properly claim that it is aggrieved.

Finally, GASP has failed to provide a statement of proposed terms and conditions that the Board should include in an order disapproving the permit renewal. *See* JCBH RR § 12.4.4(d) ("A request for a hearing . . . shall contain a short statement of the terms and conditions which the requester proposes that the Board should include in an order modifying or disapproving the Program's administrative action."). GASP's request that the Board disapprove the permit issuance in its entirety is so conclusory that, if found sufficient to comply with JCBH RR section 12.4.4(d), it would render the requirement meaningless. Not only is such a statement plainly required by the JCBH RR, but its absence underscores GASP's failure to allege any error.

GASP argues that it is not required to include the "short statement of the terms and conditions" that is required by § 12.4.4(d) because GASP only seeks an order "disapproving" the issuance of the permit. GASP argues that the required § 12.4.4(d) statement "would have been appropriate" only if GASP sought an order modifying the permit. GASP's argument is contradicted by the plain terms of § 12.4.4(d), which require a "short statement of the terms and conditions in an order modifying or disapproving the Program's administrative action." (Emphasis added). GASP's proposed interpretation is unreasonable. It would hardly make sense

for a requester who seeks relatively slight relief (i.e., permit modification) to be subject to a more severe pleading standard than a requester who seeks significant relief (i.e., permit revocation).

GASP also appears to argue that its proposal “that the Jefferson County Board of Health issue an order disapproving the issuance of [the permit] in its entirety” satisfies the requirements of § 12.4.4(d). If GASP were correct, then § 12.4.4(d) would simply require “a statement as to whether the Board should enter an Order modifying or disapproving the Program’s administrative action.” The Regulations, however, do not so state: the Regulations require a short statement of the terms and conditions that the requester proposes the Board include in such an Order.

It is a well settled principle that statutes and regulations must be presumed to have been enacted “with a meaningful purpose.” See *Ex parte Uniroyal Tire Co.*, 779 So.2d 227, 236 (Ala. 2000); *Ball Healthcare-Jefferson, Inc. v. Ala. Medicaid Agency*, 10 So.3d 1027, 1030 (Ala. Civ. App. 2008) (stating that, “[u]nder our law, the rules and regulations of an administrative agency are subject to the same principles of construction as apply to the construction of statutes”). The “meaningful purpose” behind § 12.4.4(d) is obvious: the provision prohibits a party from initiating a contested case and demanding a hearing without stating any legal basis for the requested relief.

GASP states or suggests that the requirements of § 12.4.4(d) of the Regulations are (1) not “appropriate” or (2) have been satisfied by GASP’s simple request that the Board enter an Order disapproving of the permit. Each of these interpretations would render the required “short statement of the terms and conditions” superfluous. The Supreme Court of Alabama has repeatedly stated that statutes and regulations will not be presumed to be futile. See *id.* In fact, “[t]here is a presumption that every word, sentence, or provision was intended for some useful

purpose, has some force and effect, and that some effect is to be given to each, and also that no superfluous words or provisions were used." *Uniroyal*, 779 So.2d at 236. GASP's proposed interpretation of the Regulations is, therefore, contrary to well established principles of construction.

The Hearing Officer concludes, based on the plain terms of § 12.4.4(d) and the governing principles of construction, that a petition must include a "short statement of the terms and conditions in an order modifying or disapproving the Program's administrative action." GASP's Petition includes no such statement.

Recommendation

For each of the foregoing reasons, the Hearing Officer hereby recommends that the Board enter an order granting the Program's and ABC Coke's Motions to Dismiss and dismissing GASP's Request for Hearing.

DONE this 14th day of March, 2015.

James H. Hard
James H. Hard, IV, Hearing Officer

CERTIFICATE OF SERVICE

I hereby certify that, on this 14th day of March, 2015, a copy of the foregoing Findings of Fact, Conclusions of Law, and Recommendation was served on the following counsel of record by United States Mail:

David S. Maxey
Wade C. Merritt
Spain & Gillon, LLC
2117 Second Avenue North
Birmingham, Alabama 35203
dsm@spain-gillon.com
wcm@spain-gillon.com

David A. Ludder
Law Office of David A. Ludder, PLLC
9150 McDougal Court
Tallahassee, Florida 32312-4208
davidaludder@enviro-lawyer.com

C. Grady Moore, III
Mary F. Samuels
Balch & Bingham LLP
1901 Sixth Avenue North
Suite 1500
Birmingham, AL 35203
gmoore@balch.com
msamuels@balch.com

James H. Hard
James H. Hard, IV, Hearing Officer

BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF)	
)	
Drummond Company, Inc.)	
Jefferson County, Alabama)	PETITION FOR OBJECTION
)	
ABC Coke Facility)	
Title V Major Source Operating Permit)	
No. 4-07-0001-03)	
)	
Issued by Jefferson County)	
Department of Health)	

Pursuant to section 505(b)(2) of the Clean Air Act ("CAA" or "Act"), 42 U.S.C. § 7661d(b)(2), and 40 C.F.R. § 70.8(d), GASP, an Alabama non-profit membership corporation, petitions the Administrator of the U.S. Environmental Protection Agency (EPA) to object to the Title V Major Source Operating Permit No. 4-07-0001-03 issued by the Jefferson County Department of Health to Drummond Company, Inc. for operation of the ABC Coke Facility. As required by these cited provisions, Petitioner is providing this Petition to the EPA Administrator, the Jefferson County Department of Health, and Drummond Company, Inc. Petitioner is also providing this Petition to the Regional Administrator of EPA Region 4.

EPA must object to the Permit because it is not in compliance with the Clean Air Act. Specifically, the Permit is not in compliance with the CAA in the following respects, which will be discussed in detail below. First, the permit does not comply with the provisions of Alabama's approved State Implementation Plan. Second, the Permit fails to assure compliance with and practical enforceability of the emission limits applicable to the ABC Coke Facility.



BACKGROUND

Drummond Company, Inc. applied to the Jefferson County Department of Health for a Major Source Operating Permit on or about May 15, 2013. After a public notice and comment period, the Jefferson Department of Health submitted proposed Major Source Operating Permit No. 4-07-0001-03 to EPA Region 4 for review on or about September 18, 2014.

During the public comment period on the draft Major Source Operating Permit No. 4-07-0001-03, GASP timely submitted written comments to the Jefferson County Department of Health on April 18, 2014. (Exhibit A). GASP raised all issues in this Petition in its comments to the Jefferson County Department of Health.

EPA received the proposed Title V Permit from the Jefferson County Department of Health on September 18, 2014. EPA's 45-day review period ended on August 4, 2014. EPA did not object to the proposed Permit during the review period, despite a request dated Jul 23, 2014 from GASP that it do so. The Jefferson County Department of Health issued Major Source Operating Permit No. 4-07-0001-03 to Drummond Company, Inc. on August 11, 2014. (Exhibit B).

This Petition is timely filed since Petitioners submitted it within 60 days following the end of EPA's 45-day review period (October 3, 2014) as required by CAA §505(b)(2), 42 U.S.C. § 7661d(b)(2).

BASES FOR OBJECTION

A. General Permit Condition 14 does not assure compliance with particulate emission requirements of SIP

40 C.F.R. § 70.6(a)(1) mandates that a Title V permit “assure compliance with all applicable requirements.” Applicable requirements include emission limitations on particulates necessary to achieve ambient air quality standards for PM₁₀ and PM_{2.5}. General Permit Condition 14 of Major Source Operating Permit No. 4-07-0001-03 does not assure compliance with Part 6.2 of the Jefferson County Air Pollution Control Rules and Regulations (“Fugitive Dust”) or Ala. Admin. Code r. 335-3-4-.02 (“Fugitive Dust and Fugitive Emissions”). The latter rule is part of the Alabama State Implementation Plan to achieve ambient air quality standards for PM₁₀ and PM_{2.5}. General Permit Condition 14 does not assure compliance with emission limitations on particulates because it is unconstitutionally vague and unconstitutionally restrictive. In Ross Neely Express, Inc. v. Alabama Department of Environmental Management, 437 So.2d 82 (Ala. 1983), the Alabama Supreme Court struck down a nearly identical State rule governing fugitive dust. The Court held that the requirement to take “reasonable” precautions to prevent particulate matter from becoming airborne was unconstitutionally vague and the prohibition against causing the discharge of visible fugitive dust emissions beyond the lot line was unreasonably and unconstitutionally restrictive. *See Comments of GASP on Proposed Reissuance of Major Source Operating Permit No. 4-07-0001-03 to ABC Coke, a Division of Drummond Company, Inc.* (Apr 18, 2014) at 39-40 (Exhibit A) (incorporated herein by reference). While additional “reasonable” precautions have been identified in the final Permit, Condition 14 continues to include the unenforceable prohibition against “the discharge of visible

fugitive dust emissions beyond the lot line of the property on which the emissions originate.”

Thus, General Permit Condition 14 of Major Source Operating Permit No. 4-07-0001-03 does not assure compliance with applicable requirements.

B. Permit requirements do not assure compliance with prohibition against “air pollution” (toxic air pollutants, particulates, odors) in SIP

40 C.F.R. § 70.6(a)(1) mandates that a Title V permit “assure compliance with all applicable requirements.” Applicable requirements include provisions of the Alabama State Implementation Plan, specifically Ala. Admin. Code r. 335-3-1-.08 (“Prohibition of Air Pollution”). Major Source Operating Permit No. 4-07-0001-03 does not assure compliance with r. 335-3-1-.08 because it allows Drummond Company, Inc. to permit or cause the emission of toxic air pollutants in such quantities and duration as are, or tend to be, injurious to human health; to permit or cause the emission of particulates in such quantities and duration as are, or tend to be, injurious to welfare or would interfere with the enjoyment of life or property, to permit or cause the emission of odors which are unpleasant to persons or which tend to lessen human food and water intake, interfere with sleep, upset appetite, produce irritation of the upper respiratory tract, or cause symptoms or nausea, or which by their inherent chemical or physical nature or method or processing are, or may be, detrimental or dangerous to health. *See Comments of GASP on Proposed Reissuance of Major Source Operating Permit No. 4-07-0001-03 to ABC Coke, a Division of Drummond Company, Inc.* (Apr 18, 2014) at 28-39 (Exhibit A) (incorporated herein by reference). The evidence demonstrates that existing pollution controls do not eliminate “air pollution,” *i.e.*, toxics pollutants in such quantities and duration as are, or tend to be, injurious to human health, particulates in such quantities and duration as are, or tend to be,

injurious to welfare or would interfere with the enjoyment of life or property, and odors which are unpleasant to persons or which tend to lessen human food and water intake, interfere with sleep, upset appetite, produce irritation of the upper respiratory tract, or cause symptoms or nausea, or which by their inherent chemical or physical nature or method or processing are, or may be, detrimental or dangerous to health. Thus, Major Source Operating Permit No. 4-07-0001-03 does not assure compliance with all applicable requirements.

C. General Permit Condition 45 does not assure compliance with prohibition against “air pollution” (odors) in SIP

40 C.F.R. § 70.6(a)(1) mandates that a Title V permit “assure compliance with all applicable requirements.” Applicable requirements include provisions of the Alabama State Implementation Plan, specifically Ala. Admin. Code r. 335-3-1-.08 (“Prohibition of Air Pollution,” including odors). General Permit Condition 45 (Abatement of Obnoxious Odors) in Major Source Operating Permit No. 4-07-0001-03 does not assure compliance with r. 335-3-1-.08 because it allows ABC Coke to permit or cause the emission of unlawful odors when such odors have not been characterized as “obnoxious” by a Department inspector or when the Health Officer has not determined that such odors may be abated by measures that are “technically and economically feasible” for the company to implement. Thus, General Permit Condition 45 of Major Source Operating Permit No. 4-07-0001-03 does not assure compliance with all applicable requirements. *See Comments of GASP on Proposed Reissuance of Major Source Operating Permit No. 4-07-0001-03 to ABC Coke, a Division of Drummond Company, Inc.* (Apr 18, 2014) at 40-41 (Exhibit A) (incorporated herein by reference). In addition, the requirements of General Permit Condition 45 are vague and unenforceable.

D. Permit lacks monitoring and reporting requirements sufficient to determine compliance with prohibition against “air pollution” (toxic air pollutants)

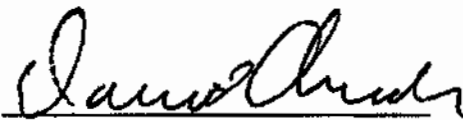
40 C.F.R. § 70.6(a)(1) mandates that a Title V permit “assure compliance with all applicable requirements.” Applicable requirements include provisions of the Alabama State Implementation Plan, specifically Ala. Admin. Code r. 335-3-1-.08 (“Prohibition of Air Pollution”). Prohibited air pollution includes the emission of toxic air pollutants in such quantities and duration as are, or tend to be, injurious to human health. Major Source Operating Permit No. 4-07-0001-03 lacks monitoring and reporting requirements sufficient for the public and government regulators to determine whether the ABC Coke facility is in compliance with r. 335-3-1-.08 because it fails to require the measurement of air toxics that are emitted by the ABC Coke facility and the measurement of air toxics to which the public are exposed. *See Comments of GASP on Proposed Reissuance of Major Source Operating Permit No. 4-07-0001-03 to ABC Coke, a Division of Drummond Company, Inc.* (Apr 18, 2014) at 28-34; 41-42 (Exhibit A) (incorporated herein by reference). Thus, Major Source Operating Permit No. 4-07-0001-03 does not assure compliance with all applicable requirements.

CONCLUSION

For the foregoing reasons, GASP requests that EPA issue an objection to Major Source Operating Permit No. 4-07-0001-03.

DATED: October 3, 2014

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David A. Ludder", written over a horizontal line.

David A. Ludder
Attorney for GASP
Law Office of David A. Ludder, PLLC
9150 McDougal Ct.
Tallahassee, Florida 32312-4208
Phone: (850) 386-5671
Fax: (267) 873-5848
Email: davidaludder@enviro-lawyer.com

CERTIFICATE OF SERVICE

I, David A. Ludder, hereby certify that I have served the foregoing "Petition for Objection" on the following persons by placing the same in the U.S. Mail, postage prepaid and addressed as follows:

Hon. Gina McCarthy, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue N.W.
Mail Code 1101A
Washington, D.C. 20004

Hon. Heather McTeer Toney, Regional Administrator
Environmental Protection Agency
Atlanta Federal Center
61 Forsyth Street, SW
Atlanta, GA 30303-3104

Mr. Bruce C. Webster
Drummond Company, Inc. (Registered Agent)
1000 Urban Center Drive, Suite 300
Birmingham, AL 35242

Dr. Mark E. Wilson, Health Officer
Jefferson County Department of Health
1400 Sixth Avenue South
Birmingham, AL 35233

Done this 3rd day of October, 2014.


David A. Ludder



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
AIR, PESTICIDES & TOXICS MANAGEMENT DIVISION
61 Forsyth St., S.W.
Atlanta, Georgia 30303
Fax Number: 404-562-9019

Electronic Transmission

MEMORANDUM

Date: August 4, 2014

To: Johnathan Stanton, P.E.
Director, Environmental Health Services
Jefferson County Department of Health

From: Randy Terry, Environmental Scientist
Air Permits Section, Air Planning Branch
U.S. EPA, Region 4

Subject: Comments on the Proposed Renewal Title V Permit
ABC Coke

cc: Heather Ceron, Air Permit Section Chief, EPA Region 4

Below are the comments from the United States Environmental Protection Agency, Region 4 on the above referenced source. Our comments are divided into two categories: 1. significant comments and 2. general comments. Significant comments are defined as those comments that would trigger an objection under 40 CFR Part 70. EPA's 45-day review period for this permit ends on August 4, 2014.

If you have any questions regarding these comments or need additional information, feel free to contact Randy Terry at (404)562-9032 or via email to terry.randy@epa.gov.

1. No significant comments
2. General Comment

- a. EPA Region 4 (EPA) requests the Jefferson County Department of Health (JCHD) to reflect in the permit record the following statement:

Prior to the final issuance of this permit, EPA and JCHD conducted inspections at ABC Coke and identified possible areas of concern. Resolution of these matters has not yet occurred, but EPA and JCDH are working together to address the issues. In addition,



EPA notes that the permit can be reopened if deemed necessary as a result of this investigation. (See Federally enforceable general permit condition number 31.)

Lewis, Judith

From: Mason, Sheryl
Sent: Friday, April 17, 2015 1:54 PM
To: FOIA HQ
Subject: FW:
Attachments: [Untitled].pdf

Hello,

Please see the attached letter. The Assistant Director of the Title VI team would like for this to be routed as a FOIA request. I have been advised to send to your office to process that request.

If you need any additional information, please feel free to contact me. Thank you.

Sheryl Mason
564-1746

P.S. I have the hard copy as well if I should send that instead

From: EZTech_Device@epa.gov [mailto:EZTech_Device@epa.gov]
Sent: Friday, April 17, 2015 1:42 PM
To: Mason, Sheryl
Subject: